Eugenic Sterilization in the United States

A Comparative Summary of Statutes and Review of Court Decisions

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INTRODUCTION

This summary of current State laws and review of court decisions on eugenic sterilization in the continental United States has been prepared because of the bearing it may have on the problem of the causes, prevalence, and means for the prevention and treatment of mental and nervous diseases.[1] This supplement seeks to furnish an objective or noncritical statement of the sterilization movement in its legislative and judicial features; in other words, it is not intended as an expression of the attitude of the Service nor of the views of its personnel on the wisdom of sterilization as a State policy. There is no Federal sterilization law.

It is apparent that the decisions by the various States to accept or reject eugenic sterilization have been affected by their perspective of the history of castration in a criminologic setting, evidence of such influence being found in judicial utterance as late as 1935. For this reason, there is need for stressing the point that eugenic sterilization is entirely nonpunitive in purpose. While it is true that, under certain current eugenic sterilization laws, conviction of crime may result eventually in the sterilization of the convicted person, the operation, if performed, would be performed not as a punishment, but rather because such antisocial conduct would be considered as one indication that the person is defective or socially inadequate, and, upon investigation and examination, would be found to be an undesirable parent. Accordingly, there have been excluded from the present study State laws and statutory provisions which authorize a sterilization operation as punishment. Court decisions pertaining to punitive sterilization are also excluded.

Part I is a summary of the laws in tabular form and aims to give a composite picture of the statutes with reference to the provisions of more general interest; and it should be kept in mind that only specific provisions of the sterilization laws are included in the tables, no effort being made to examine the general laws of the States for correlated provisions. While both voluntary and compulsory sterilization laws are included, they are arranged separately in the tables for the purpose of facilitating more concise analysis and comparison. Part II is a review of court decisions and treats each decision in the chronologic order in which it was rendered. An appendix includes tables of citations to current laws and court decisions.

[1] See section 4 (b) of the Act of June 14, 1930, volume 46 of the Statutes at Large, p. 587 (United States Code, title 21, section 196).

The search of session laws included the 1939 regular legislative sessions. Acknowledgment is made of the valuable assistance rendered by Eleanor E. A. Herring, Chief of the State Legislative Section of the Office of Government Reports, and the State health officers in respect to the search for 1939 legislation.[2] The search for court decisions included the General Digest for July 1939 (vol. 8).

[2] At time of checking manuscript in galley proof form, July 22, 1940, the only sterilization legislation during 1940 sessions which had come to notice was an amendment to section 1 of the current Virginia law as regards enumeration of institutions, which amendment has not been worked into the compilation.

PART I. SUMMARY OF STATUTES

General

Eugenic sterilization laws are in effect at the present time in 29 States; [1] [2] [2] of these 29 States have only voluntary laws, leaving 27 States which are committed to a policy of compulsory sterilization of defective persons. Generally speaking, the main purpose of these laws is the removal, as a eugenic measure, of the power of procreation—and *only* the power of procreation—from enumerated classes of persons. Under these laws, the feeble-minded, the mentally ill, epileptics, and others may be subjected to investigation and examination to determine whether there is likelihood of similar defectiveness or disease being transmitted to their offspring, or whether there are other reasons why they should not be allowed to propagate. The first such law was enacted by Indiana in 1907; and Georgia, by an enactment of its 1937 legislature, became the most recent State to proclaim that there is social advancement in a policy which seeks to improve future generations by preventing procreation of certain groups of defectives.

While such statutes are stated to be eugenic in purpose, one of these sterilization provisions is contained in a law relative to the care and treatment of feeble-minded persons, and one appears to aim toward improvement in the health and morals of certain inmates of prisons; but all others contain more or less specific language showing that their purpose is improvement of the race, and some of this group make reference to various combinations of purposes. Thus, some state that one purpose is the betterment of the "physical, mental, neural, or psychic condition" of the individual, and others mention improvement in the moral condition of persons as one of the purposes of the operations. While various other reasons are given, it is believed that sufficient has been set forth to show that the term "eugenic" is only a general appellation, but it is considered desirable so to designate these statutes for the purpose of distinguishing them from punitive sterilization enactments which have been excluded from consideration.

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[1] Alabama, Arizona, California, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

[2] Minnesota and Vermont.

As already mentioned, 29 States have current eugenic sterilization laws on their statute books, but 2 of these States (California and Indiana) have 3 such laws each and 2 of them (Maine and Oklahoma) have 2 laws each, making a total of 35 such laws; of this total, 31 are compulsory and 4 are voluntary. There are 2 States (California and Maine) which have voluntary as well as compulsory laws.

All laws designate the classes of persons who are rendered subject to sterilization and set forth the procedure and agencies of selection. Some are more detailed and comprehensive and variously specify limitations on the surgical or other sterilizing techniques, provide for the appointment of guardians and specially qualified personnel, authorize fees and other expenditures, require notice to the defective person and/or others with opportunity to be heard and the right of appeal, contain safeguards from civil and criminal liability for those participating in the administration of the laws, and require certain records, studies, and reports of the operations and the results thereof. In this connection it may be stated that the sterilization laws of Alabama, California, Connecticut, Delaware, and Wisconsin do not contain the same provisions for the protection of the rights of individuals as are found in other laws, such as those of Idaho, Iowa, Michigan, Nebraska, North Carolina, and North Dakota, and those of Arizona, Indiana (1927), Mississippi, New Hampshire, Oklahoma (1931), South Carolina, Utah, Virginia, and West Virginia. The latter nine laws may be termed the "Virginia group" since they are modeled after the statute of Virginia, which had been held valid by the highest State court and the United States Supreme Court.

The voluntary or consent features of the four voluntary laws are as follows:

California.—Requires the written consent of the parent or guardian if the defective person be a minor, and the written consent of the lawfully appointed guardian if the person be an adult.

Maine.—Requires the written consent of the defective person when mentally competent; and, if not so competent, the written consent of the nearest relative or guardian must be obtained.

Minnesota.—Requires the written consent of an insane person as well as of the spouse or nearest kin, or duly appointed guardian; but in the case of a feeble-minded person, only the consent of the spouse or nearest kin is required, and, if no spouse or near kin can be found, the State board of control is permitted to give the consent.

Vermont.—Requires the consent of the defective person if of sufficient intelligence to understand the contemplated loss of procreative powers; and, if not of such intelligence, the written request of the natural or legal guardian may be accepted. Sterilization is also contingent on the defective person's voluntary submission to the operation.

It will be noted upon summarizing that, under two of these voluntary laws and with respect to one class of defective persons under another law, the consent of the individual defective person to sterilization is

necessary, whereas under one law and with respect to one class of defective persons under another law only the consent of other persons, such as parent or guardian, on behalf of the defective person, is required.

Of the 31 sterilization statutes that are compulsory, the consent of the defective person or of any other person being unnecessary, 14 [3] are in the form of permissive legislation in that they *authorize* the designated agencies to effect sterilizations after compliance with the procedures outlined in the respective acts, and 16 [4] statutes are mandatory in form since they *require* the designated agencies to initiate proceedings. The Montana statute appears to be silent in this respect and should probably be classified as a mandatory statute.

Application to Groups

Table 1 presents a summary of current sterilization laws as regards the various groups of defective persons that are enumerated therein as subject to sterilization. There is considerable variety in the phraseology of the laws in this respect, but for all practical purposes the enumerated types may be combined into the five designations shown. For example, several laws mention the various degrees of feeble-mindedness, such as idiocy and imbecility, while others, in their application to the insane, specify those "afflicted with hereditary forms of insanity that are recurrent," but these and other details and qualifications have been eliminated in the preparation of the table.

It will be noted that in all States which have sterilization laws the feeble-minded are rendered subject to sterilization. The insane may be sterilized in all except two, the epileptic in approximately two-thirds, the habitual criminals in one third, and the moral degenerates and sexual perverts in approximately one-fourth. The enumeration of those last two groups (habitual criminals and moral degenerates and sexual perverts) is confined almost entirely to laws enacted by States in the middle and far West. The Alabama and South Dakota statutes apply only to the feeble-minded, and the California laws are quite unique as regards the designation of persons made subject to sterilization in that State. The Georgia law is the only one which specifically includes *physically* defective, deficient, or diseased persons in those made subject to examination; and the 1935 Oklahoma statute is the only one which is aimed exclusively at the sterilization of habitual criminals as that term is generally defined by statutes. It is of interest to note also that the definition of "habitual criminal" under the North Dakota statute is identical with the definition of "moral degenerate and sexual pervert" under the Washington law. The Delaware

[3] Alabama, Arizona, California (both laws), Connecticut, Delaware, Indiana (1927), Kansas, Mississippi, New Hampshire, South Dakota, Utah, Virginia, and Wisconsin.

[4] Georgia, Idaho, Indiana (1931 and 1935), Iowa, Maine, Michigan, Nebraska, North Carolina, North Dakota, Oklahoma (both laws), Oregon, South Carolina, Washington, and West Virginia.

law is the only one of those which apply to habitual criminals that confines sterilization to those whose criminality is caused by mental abnormality or mental disease, and the Connecticut act includes persons whose children would inherit a tendency to crime. Three statutes include persons suffering from syphilitic disease among the enumerated classes of defective persons, and the 1931 Oklahoma law is the only statute which confines liability to sterilization proceedings among the enumerated groups to those under specified ages.

TABLE 1.—*Application to groups*

State laws	Feeble-minded	Insane	Epileptics	Habitual criminals	Moral degenerates—sexual perverts	Total
Compulsory laws						
Alabama	×					1
Arizona	×	×	×			3
California (1913)				[1] ×		[2] 1
California (1937)	×	×				[3] 2
Connecticut	×	×				[4] 2
Delaware	×	×	×	[5] ×		4
Georgia [6]	×	×				2
Idaho	×	×	×	×	×	5
Indiana (1927)	×	×	×			3
Indiana (1931)	×					1
Indiana (1935)		×				1
Iowa	×	×	×	×	×	[7] 5
Kansas	×	×	×			3
Maine	×	×				2
Michigan	×	×	×		×	4
Mississippi	×	×	×			3
Montana	×	×	×			3
Nebraska	×	×		×	×	4
New Hampshire	×	×	×			3
North Carolina	×	×	×			3
North Dakota	×	×	×	[8] ×	×	5
Oklahoma (1931) [9]	×	×	×	[10] ×		4
Oklahoma (1935)				[11] ×		1
Oregon	×	×	×	×	×	[12] 5
South Carolina	×	×	×			3
South Dakota	×					1
Utah	×	×	×			[13] 3
Virginia	×	×	×			3
Washington	×	×	×	[14] ×	[15] ×	5
West Virginia	×	×	×			3
Wisconsin	×	×	×			[16] 3
Total	28	26	20	10	7	91

[1] Confined recidivists who have been committed to a State prison at least twice for certain sexual offenses or three times for any crime, who show evidence, while inmates, that they are moral or sexual degenerates or perverts.

[2] Applies also to life prisoners exhibiting continued evidence of moral or sexual depravity.

[3] Applies also to persons suffering from perversion or marked departure from normal mentality, or from disease of a syphilitic nature.

[4] Applies also to persons whose children would inherit a "tendency to crime."

[5] Habitual or confined criminals convicted of at least 3 felonies whose criminality is caused by mental abnormality or mental disease.

[6] Applies to the "mentally or physically defective, deficient, or diseased."

[7] Applies also to syphilitics.

[8] Defined as a person who is a moral degenerate and sexual pervert or who is "addicted to the practice of sodomy or the crime against nature, or to other gross, bestial, and perverted sexual habits and practices prohibited by statute."

[9] Applies only to males under the age of 65 and to females under the age of 47.

[10] Defined as a person incarcerated in any penal institution convicted of felonies 3 times.

[11] Defined as a person convicted on 3 occasions of felonies involving moral turpitude but excluding offenses arising out of the "prohibitory laws," revenue acts, embezzlement, or political offenses.

[12] Applies also to incurable syphilitics and any person convicted of any one of designated crimes.

[13] Applies also to persons afflicted with "habitual degenerate sexual criminal tendencies."

[14] Defined as a person convicted at least 3 times of felonies and sentenced to serve in a penitentiary therefor.

[15] Defined as a person who is "addicted to the practice of sodomy or the crime against nature, or to other gross, bestial, and perverted sexual habits and practices prohibited by statute."

[16] Applies also to criminal persons.

TABLE 1.—*Application to groups*—Continued

State laws	Feeble-minded	Insane	Epileptics	Habitual criminals	Moral degenerates—sexual perverts	Total
Voluntary laws						
California	[17] ×					1
Maine	×	×				2
Minnesota	×	×				2
Vermont	×	×				2
Total	4	3	0	0	0	7
Total, all laws	32	29	20	10	7	98

[17] Specifies only "idiot" in the case of minors and "idiot or fool" in the case of adults.

Application According to Residence

Following the consideration of the groups or types of persons enumerated in the various laws, the next feature which suggests inquiry is the effect of the residential status of persons who belong to these groups on their amenability to sterilization proceedings. In other words, do the various laws apply to all persons of the enumerated groups regardless of place of residence within the State or only to those of such groups as are confined in institutions, and if the latter, to those in what particular institutions or types of institutions? Table 2 is concerned with this feature of the laws. Reference to this table shows that, with the exception of the 1931 and 1935 Indiana laws which apply at the time of commitment to institutions so that they in effect apply exclusively to noninstitutionalized persons, all sterilization statutes apply to those portions of the enumerated classes of defective persons that are confined in specified institutions. Less than one-fourth of the compulsory laws apply to all persons of the enumerated groups whether they are confined in institutions or are in the population at large. There is a wide diversity in the statutes that apply only to the institutionalized portions of the enumerated groups as regards the enumeration of particular institutions or the designation of types of institutions in which the inmates are rendered subject to examination and investigation. This difficulty makes impracticable any clear, concise, and exact classification of this feature of the laws; and it is therefore presented in the following table by the insertion of the phraseology of the respective statutes. Under three of the compulsory laws which apply only to the institutionalized portions of the enumerated groups, sterilization is authorized only when the release of the inmates is contemplated.

TABLE 2.—*Application according to residence*

State laws	Apply to—		Institutions [2] enumerated or designated in laws which apply only to institutionalized persons of enumerated groups [1]
	All persons of enumerated groups [1] regardless of residence	Only institutionalized persons of enumerated groups [1]	
Compulsory laws			
Alabama		×	Home for mental deficients or inferiors.
Arizona		×	Hospital.
California (1913)		×	Prisons.
California (1937)		[3] ×	Hospitals, and homes for feeble-minded.
Connecticut		×	Enumerated hospitals, prisons, training school and hospital, and training school.
Delaware	×		
Georgia		×	Homes, hospitals, colonies, and institutions for care of mentally or physically defective, deficient, or diseased; prisons, penitentiaries, correction schools, reformatories, detention homes, and camps.
Idaho	×		
Indiana (1927)		×	State or county institutions having care or custody of insane, feeble-minded, or epileptics.
Indiana (1931) [4]			
Indiana (1935) [4]			
Iowa	×		
Kansas		×	Hospitals, hospital for epileptics, home for feeble-minded, penitentiary, reformatory, and industrial school for girls.
Maine		×	Institutions having care or custody of insane or feeble-minded.
Michigan	×		
Mississippi		×	Enumerated hospitals, and colony-school for feeble-minded.
Montana		×	Custodial institutions for feeble-minded, insane, or epileptic persons.
Nebraska		[3] ×	Hospitals, institutions for feeble-minded, penitentiary, reformatories, industrial home, industrial schools, or other such institutions.
New Hampshire		×	State or county institutions.
North Carolina	×		
North Dakota		×	All institutions, including hospital, training school, hospital for feeble-minded, and penitentiary.
Oklahoma (1931)		[3] ×	Enumerated hospitals, institution for feeble-minded, penitentiary, reformatory, and any other penal institution, or any other such institution supported in whole or in part from public funds.
Oklahoma (1935)	[5] ×		
Oregon	×		
South Carolina		×	Penal or charitable institutions.
South Dakota	×		
Utah		×	Hospital, prison, industrial school, and training school.
Virginia		×	Enumerated hospitals, and colony for epileptics and feeble-minded.
Washington		×	Institutions having care of individuals held in restraint.
West Virginia		×	Enumerated hospitals, industrial homes, and industrial schools.
Wisconsin		×	State and county institutions having custody of insane, feeble-minded, epileptic, and criminal persons.
Total	[6] 8	[6] 21	

[1] See table 1.
[2] All institutions are State institutions unless otherwise indicated, and "hospitals" are hospitals for the insane unless otherwise indicated.
[3] Operation authorized only when release contemplated.
[4] Applies only at time persons are committed to institutions.
[5] As regards application to population at large, applies only to those under sentence to confinement in a penal institution.
[6] The 1931 and 1935 Indiana laws apply only to extrainstitutionalized persons, so that the sum of these 2 columns is 2 less than the total number of current compulsory laws.

TABLE 2.—*Application according to residence*—Continued

State laws	Apply to—		Institutions enumerated or designated in laws which apply only to institutionalized persons of enumerated groups
	All persons of enumerated groups regardless of residence	Only institutionalized persons of enumerated groups	
Voluntary laws			
California	[7] X		
Maine	[8] X		
Minnesota	[9] X	[9] X	Hospitals.
Vermont	X		
Total	4	1	
Total, all laws	[10] 12	[10] 22	

[7] As originally enacted, this law apparently was intended to apply only in the case of noninstitutionalized persons, and, since the 1937 law applies to this class of defective institutionalized persons, it is doubtful whether it would have any practical application to institutionalized persons.

[8] Apparently would have no practical application to institutionalized persons since the compulsory law applies to them.

[9] As regards the feeble-minded, applies to those committed to the guardianship of the State board of control, so that in respect to this class of persons it is possible the law is susceptible of interpretation as applying to the population at large as well as to institutionalized persons; as regards insane persons, it applies only to those who have been committed and have been inmates of a State hospital for at least 6 consecutive months.

[10] See footnotes 4 and 9; the sum of these 2 columns is, therefore, 1 less than the total number of sterilization laws.

Surgical Limitations

For the purposes of the present study, operations which will remove from persons the power of procreation may be divided into those involving the removal of the reproductive glands or gonads, i. e., the testes in males and the ovaries in females, and those involving only an operation on the vasa, ducts, or tubes to prevent the passage of the spermatozoa and the ova. Under the current sterilization laws, the removal of the ovaries is termed oophorectomy, and the removal of the testes is apparently contemplated by the term "castration"; whereas the less radical operation of cutting the Fallopian tubes in the female is known as salpingectomy or fallectomy, and the term "vasectomy" is exclusively used to describe the cutting of the vas deferens in the male. It is the purpose of table 3 to classify the laws in respect to authorization of these surgical procedures and to show what limitations are contained in the various statutes. It will be noted that a large majority of the laws are shown in this table as authorizing discretion on the part of the administrative officers or physicians designated to carry out the provisions of the acts; but this classification does not necessarily mean that all of these laws authorize the more radical operations as mentioned above; and this would be true even under those laws which, as shown in the third column, do not specifically prohibit castration or the removal of sound or disease-free organs. In fact, many of the laws listed as permitting the use of discretion in this respect mention "vasectomy" and "salpingectomy"

as examples of the operations that are intended to be authorized; and since the purpose of these laws generally is only the removal of the power of procreation, it would appear that the more radical operations could be performed only when specific need therefor could be shown; and they could not be performed at all under those laws which prohibit castration or the removal of healthy organs. However, it will be noted that six laws specifically authorize "asexualization" and/or oophorectomy, and under one statute persons may be "emasculated" under certain circumstances.

TABLE 3.—*Surgical limitations*

State laws	Operation limited to vasectomy in males and salpingectomy, etc., in females	Permit discretion in type or extent of operation	Prohibit castration or removal of sound or healthy organs
Compulsory laws			
Alabama		×	
Arizona	×		×
California (1913)		[1] ×	
California (1937)		×	
Connecticut	[2] ×	[2] ×	
Delaware		×	
Georgia		×	[3] ×
Idaho	×		
Indiana (1927)		×	×
Indiana (1931)		×	×
Indiana (1935)		×	
Iowa		×	×
Kansas		[4] ×	
Maine	×		
Michigan		[5] ×	
Mississippi	×		×
Montana		×	
Nebraska		×	
New Hampshire	×		×
North Carolina		[1] ×	
North Dakota		×	×
Oklahoma (1931)	×		×
Oklahoma (1935)	×		
Oregon		×	
South Carolina		×	×
South Dakota		×	
Utah		[1] ×	
Virginia	×		×
Washington		×	[6] ×
West Virginia	×		×
Wisconsin		×	
Total	[7] 10	[7] 22	12
Voluntary laws			
California		[1] ×	
Maine	×		
Minnesota	×		
Vermont	×		
Total	3	1	0
Total, all laws	[8] 13	[8] 23	12

[1] Specifically authorizes asexualization.
[2] Specifies vasectomy in the case of males and oophorectomy in the case of females.
[3] Prohibits operations that would "unsex."
[4] Specifies vasectomy or asexualization in the case of male and salpingectomy or oophorectomy in the case of females.
[5] Includes treatment by X-rays.
[6] Provides that no person shall be "emasculated under the authority of this act except that such operation shall be found to be necessary to improve the physical, mental, neural, or psychic condition."
[7] Since the Connecticut law is entered in both columns, the sum thereof is 1 more than the total number of compulsory laws.
[8] See footnote 7; the sum of these 2 columns is, therefore, 1 more than the total number of laws.

Appointments, Fees, and Expenditures

Table 4 gives an analysis of the provisions made by the States in their respective sterilization laws for the appointment or employment of officers and employees to carry out the details of the new regulatory function. This table shows that, with the exception of that of legal guardian and attorney to protect the rights and interests of persons who are to be considered for sterilization, the appointment of such personnel is authorized in less than half of the laws. While 15 laws require the appointment of such a legal guardian, the appointment is made contingent upon the nonavailability of other persons, with the exception of 2 statutes. However, more than two-thirds of the laws authorize the payment of specified fees, expenses, or other expenditures.

TABLE 4.—*Appointments, fees, and expenditures*

State laws	Authorize or require employment or appointment of—		Require appointment of—		Fees of physicians, surgeons, guardians, person's attorney, and appeal expenses if impecunious, traveling and other expenses of board members, and other expenditures authorized
	Examining physicians	Surgeons	Legal guardian or guardian ad litem [1]	Attorney for appeal [2]	
Compulsory laws					
Alabama					
Arizona			×		Guardian, $25 maximum.
California (1913)					
California (1937)					
Connecticut	×	[3]×			Physician and surgeon.
Delaware	×	×			Physician and surgeon, hospital expense and transportation.
Georgia			[4]×		Traveling expense of adjudicators.
Idaho				×	Examining board member expense, attorney and appeal expense.
Indiana (1927)			×		Guardian, $25 maximum.
Indiana (1931)					
Indiana (1935)					
Iowa		×	×	×	Examining board members' expense; surgeon; guardian, $25 maximum; attorney and appeal expense.
Kansas		×			Surgeon.
Maine			[5]×		
Michigan	×	×	×		Surgeon and hospital expense, $50 maximum.
Mississippi			×		Guardian, $10 maximum.
Montana					
Nebraska			×		Examining board members' expense.
New Hampshire	×	×	×		Physician and surgeon in case of public charges; guardian, $20 maximum.
North Carolina [6]			[7]×		

[1] Under all laws listed in this column, except those of South Carolina and West Virginia, the appointment is made contingent upon the nonavailability of other designated persons to protect the person's interests. Under the West Virginia law, a guardian ad litem must be appointed for both the original adjudication and on appeal, if an appeal is taken; in the other listed statutes, the appointment is required only for the original adjudication.

[2] Only in the event the person is financially unable to employ his own attorney to prosecute an appeal from an order directing his sterilization.

[3] One of the examining board members.

[4] Provides for sending of notification to person or his legal representative of an adverse sterilization decision and that if no near relative be known and no legal guardian has been appointed such notice shall be sent to the solicitor general of the proper county superior court who is then required to protect the rights and interests of the person.

[5] Specifies an attorney.

[6] Authorizes appointment by the board of a secretary of the State board of eugenics.

[7] Provided there is no solicitor of the county in which the person resides.

TABLE 4.—*Appointments, fees, and expenditures*—Continued

State laws	Authorize or require employment or appointment of—		Require appointment of—		Fees of physicians, surgeons, guardians, person's attorney, and appeal expenses if impecunious, traveling and other expenses of board members, and other expenditures authorized
	Examining physicians	Surgeons	Legal guardian or guardian ad litem	Attorney for appeal	
Compulsory laws—Con.					
North Dakota	×			×	Examining board member, $10 per day and expenses; attorney.
Oklahoma (1931)			×		Guardian, $25 maximum.
Oklahoma (1935)		×			Surgeon.
Oregon				×	Examining board members' expense, attorney and appeal expense.
South Carolina			×		Guardian, $10 maximum.
South Dakota [8]		[9] ×	×		Surgeon; guardian, $25 maximum.
Utah			×		Guardian, $25 maximum.
Virginia			×		Guardian, $25 maximum.
Washington				×	Examining board members' expense; attorney.
West Virginia			×		Guardian, $25 maximum.
Wisconsin	×				Examining board member, $10 per day maximum and expense.
Total	6	8	16	5	
Voluntary laws					
California					
Maine					
Minnesota [10]	×				
Vermont	[11] ×	[11] ×			Physician, $3 maximum; surgery, $20 and $30 for males and females, respectively; hospital care and nursing.
Total	2	1	0	0	
Total, all laws	8	9	16	5	

[8] Provides for appointment of attorney by county enforcement agency to defend order of sterilization on appeal.
[9] Only for extrainstitutional persons.
[10] Authorizes employment or appointment of a psychologist.
[11] Only for persons being supported by the State in institutions.

Initiating and Adjudicating Agencies

As is the practice in all laws which involve a regulatory function, each sterilization law designates the agency, officer, and/or other persons who are authorized or required to initiate proceedings, and the agency or tribunal which renders decision as to whether or not the selected persons shall be sterilized. Under practically all compulsory laws that apply to institutionalized persons the superintendent or other institutional head or officer is designated to initiate the inquiry; and of those compulsory statutes that apply to the population at large, the State health officer is designated in three. Of the two available methods of adjudication, administrative and judicial, the States, as regards compulsory sterilization laws, have shown a very decided preference for the former, since, as will be seen from table 5, under only 6 of these laws are sterilization decisions made by courts. Of the 25

compulsory statutes which use the administrative mode of adjudication, 11 direct the creation of special boards, institutional and State, for the purpose, and 12 utilize pre-existing boards, institutional and State; in one (which applies only to inmates) the institutional superintendent makes the decisions, and in another the same officer decides in the case of inmates and a pre-existing county commission in the case of noninmate persons. As regards the choice of adjudication method in the aforementioned 6 laws that provide a court trial, there is undoubtedly considerable significance in the fact that all 6 apply to noninstitutionalized persons.

TABLE 5.—*Initiating and adjudicating agencies*

State laws	Initiating agencies		Adjudicating agencies	
	Institutionalized persons [1]	Noninstitutionalized persons [1]	Institutionalized persons [1]	Noninstitutionalized persons [1]
Compulsory laws				
Alabama	Assistant to superintendent.		Superintendent	
Arizona	Superintendent		Board of medical examiners.	
California (1913)	Resident physician.		Created institutional board.[2]	
California (1937)	Superintendent		Department institution.	
Connecticut	do		Created institutional board.[2]	
Delaware	Institutional board et al.[3]	Mental hygiene clinic et al.[4]	Board of charities [5]	Board of charities.[6]
Georgia	Superintendent		Created board [2]	
Idaho	do	Health officer	County district court	County district court.
Indiana (1927)	do		Institutional governing board.[7]	
Indiana (1931)		Court-appointed physician.		Court.
Indiana (1935)		do		Do.
Iowa	Superintendent	Health officer	County district court	County district court.
Kansas	do		Created institutional board.[2]	
Maine	do		Department of health and welfare.[8]	
Michigan	do.[9]	Designated relatives and officers.[10]	Probate court	Probate court.
Mississippi	do		Institutional governing board.	

[1] All boards or officers are State boards or officers unless otherwise indicated, and "superintendents" are institutional superintendents.

[2] The composition of the created boards mentioned in this table are as follows: *California* (1913), general superintendent of State hospitals, secretary of State board of health, and institutional resident physician; *Connecticut*, 2 appointed surgeons and physician or surgeon in charge of institution; *Delaware*, physician, alienist, and institutional superintendent in the case of institutionalized persons; 2 physicians and an alienist in case of noninstitutionalized persons; *Georgia*, chairman of State board of control, director of State board of health, and superintendent of a designated State hospital; *Kansas*, chief medical officer, governing board, and secretary of State board of health; *Montana*, chief physician of each custodial institution, president of State medical association, female member named by association, and secretary of State board of health; *Nebraska*, 5 physicians from State institutions; *North Carolina*, commissioner of public welfare, secretary of State board of health, superintendents of 2 designated institutions and the attorney general; *North Dakota*, 3 appointed physicians; *Oregon*, State board of health and designated institutional superintendents; and *Wisconsin*, surgeon, alienist, and institutional superintendent.

[3] Mental hygiene clinic or the superintendent of a designated State hospital.

[4] Superintendent or governing board of a designated State hospital.

[5] Upon recommendation of a created institutional board. See footnote 2.

[6] Upon recommendation of a created State board. See footnote 2.

[7] With the approval of the State department of public welfare.

[8] Decision must be approved by 2 or 3 designated institutional superintendents.

[9] Also parent, spouse, sibling, child, guardian, State welfare commission, sheriff, superintendent of poor, or supervisor of township.

[10] Parent, spouse, sibling, child, guardian, any State institutional superintendent, State welfare commission, sheriff, superintendent of poor, or township supervisor.

TABLE 5.—*Initiating and adjudicating agencies*—Continued

State laws	Initiating agencies		Adjudicating agencies	
	Institutionalized persons	Noninstitutionalized persons	Institutionalized persons	Noninstitutionalized persons
Compulsory laws—Con.				
Montana	Chief physician		Created board [2]	
Nebraska	Created board [2]		do.[2]	
New Hampshire	Superintendent		Institutional governing board or board of county commissioners.	
North Carolina	Governing board or institutional head.[11]	Superintendent of public welfare, next kin, or legal guardian.[12]	Created board [2]	Created board.[2]
North Dakota	Superintendent		do.[2]	
Oklahoma (1931)	do		Board of affairs	
Oklahoma (1935)	Warden	County attorney	District court	District court.
Oregon	Superintendent	Health officer	Created board [2]	Created board.[2]
South Carolina	do		Board of health executive committee.[13]	
South Dakota	do	Various officers et al.[14]	Superintendent	County subcommission.[15]
Utah	do		Institutional governing board.	
Virginia	do		Hospital board	
Washington	do		Institutional board of health.	
West Virginia	do		Public health council	
Wisconsin	Board of control		Board of control [16]	
Voluntary laws				
California	Parent or guardian.	Parent or guardian	Superintendent	Superintendent.
Maine	Attending physician.	Attending physician.	Attending physicians and 2 consultants.	Attending physician and 2 consultants.
Minnesota	Board of control	Board of control	Board of control [17]	Board of control.[17]
Vermont	Commissioner of public welfare.	Person or guardian	2 physicians appointed by commissioner of public welfare.	2 physicians.

[2] See footnote on p. 11.

[11] Also the county superintendent of welfare in case of county institution inmates; such superintendent may also act as prosecutor in the case of State institution inmates when authorized to do so by the institution superintendent.

[12] In the case of parolees from State institutions, the county superintendent of public welfare may act as prosecutor or petitioner.

[13] Superintendent executes decision unless some disability indicates advisability of postponement or abandonment.

[14] Officers and employees of the State commission for the control of the feeble-minded, or of the county subcommission, or any relative, guardian, or county resident.

[15] For the control of the feeble-minded. Commitment to an institution for the purpose of sterilization is made and the institutional superintendent is required to execute the order unless there be contraindication.

[16] Approving decision by a board created by it. See footnote 2.

[17] After consultation with physician and psychologist appointed by it.

Nature and Scope of Proceeding

The method by which the aforementioned adjudicating agencies elicit the information necessary to determine whether selected persons are proper subjects for sterilization, in other words, the nature and scope of the adjudication proceeding provided by sterilization laws, forms the basis of table 6. There is great variety in the phraseology of the laws as regards this feature, but it is believed that the headings selected for the first five columns sufficiently describe for all practicable purposes the nature of the various proceedings interpretable from these laws. These five column headings are arranged from left to right in the assumed order of extent of formality, the "court

trial" being considered to require greater adherence to legalistic procedure, formal rules of evidence, and the like, than any of the other four methods which appear to exist in sterilization laws, and so on in decreasing extent to the "examination of condition" which is considered the least formal or technical mode of eliciting the factual data. Several laws present difficulties as to whether "consultation," "investigation," or "examination of condition" most properly describe the action required of the adjudicating agency. In the laws which are silent, or in which the wording is vague, the difficulty was met by classifying them as requiring only the proceeding that was least formal in nature. As regards the seven columns at the right of the table, it should be borne in mind that only those procedural requirements, prerogatives, rights of parties, etc., which are specifically provided in the laws are tabulated, no effort being made, for example, to show which of these requirements are provided in the general laws of the States that direct the adjudication to be made by a court trial.

TABLE 6.—*Nature and scope of proceeding*

State laws	Nature of proceeding or adjudication					Scope of proceeding or adjudication (procedural requirements, prerogatives, rights of parties, etc.)						
	Court trial	Hearing	Consultation	Investigation	Examination of condition	Consideration of record, family history, etc.	Evidence by either party	Witnesses may be sworn	Depositions may be taken	Person entitled to counsel	State must produce person	Person has right to be present
Compulsory laws												
Alabama			X									
Arizona		X					X	X	X	X	X	
California (1913)			[1] X									
California (1937)					[2] X							
Connecticut					X	X						
Delaware					X							
Georgia		X					X	X				X
Idaho	X						X			X		
Indiana (1927)		X					X	X	X	X	X	
Indiana (1931)	X											
Indiana (1935)	X											
Iowa	X						X			X		
Kansas				[3] X		X		X				
Maine				X		X						
Michigan	X					X				X		[4] X
Mississippi		X					X	X	X	X		X
Montana		X										X
Nebraska		X				X	X			X	X	
New Hampshire		X					X	X	X	X		X
North Carolina		X					X	X	X	X		X
North Dakota		X				X	X	[5] X				X
Oklahoma (1931)		X					X	X		X		X
Oklahoma (1935)	X											

[1] An "examination into particulars."
[2] The act merely states that the adjudicating agency "may, in its discretion, cause" the designated persons "to be sterilized."
[3] An "inquiry into condition."
[4] Unless court considers presence improper and unsafe.
[5] Law states only "power to summon and examine witnesses."

TABLE 6.—*Nature and scope of proceeding*—Continued

State laws	Nature of proceeding or adjudication					Scope of proceeding or adjudication (procedural requirements, prerogatives, rights of parties, etc.)						
	Court trial	Hearing	Consultation	Investigation	Examination of condition	Consideration of record, family history, etc.	Evidence by either party	Witnesses may be sworn	Depositions may be taken	Person entitled to counsel	State must produce person	Person has right to be present
Compulsory laws—Con.												
Oregon					X	X		X				
South Carolina		X					X	X	X	[6] X		X
South Dakota		X			X					[6] X	[7] X	[7] X
Utah		X					X	X	X	X		X
Virginia		X					X	X	X	X		X
Washington					X	X		X				
West Virginia		X					X	X	X	X		X
Wisconsin			X				X					
Total	[8] 6	[8] 15	[8] 3	[8] 2	[8] 6	8	16	15	9	15	4	13
Voluntary laws												
California					X							
Maine			X									
Minnesota			[9] X									
Vermont					X							
Total	0	0	2	0	2	0	0	0	0	0	0	0
Total, all laws	[10] 6	[10] 15	[10] 5	[10] 2	[10] 8	[11] 8	[11] 16	[11] 15	[11] 9	[11] 15	[11] 4	[11] 13

[6] In the case of noninstitutionalized persons only; and such persons must be informed of right to counsel.
[7] Person must appear, and law directs that if he fails or refuses to appear, the adjudicating agency shall issue its warrant for the person and provide for his custody until hearing is concluded.
[8] The South Dakota statute provides two procedures depending upon the residential status of the person; i. e., a hearing in the case of noninstitutionalized persons and an examination into condition in the case of inmate. The total of these 5 columns is therefore one more than the total number of compulsory laws.
[9] And "a careful investigation of all the circumstances of the case."
[10] See footnote 8; the total of these 5 columns is one more than the total number of sterilization laws.
[11] These totals contain only the specific provisions of the sterilization laws; in some of the States, particularly those which provide for trial by jury as the nature of a sterilization proceeding or adjudication, the general laws of those States no doubt provide for many or all of these procedural requirements in adjudications which would be applicable to sterilization proceedings.

Requirement of Notice

Under our form of government and legal system, the essentials of the constitutional guarantee of "due process of law" are, generally speaking, the right of a person to have reasonable notice of the fact that a controversy in which he is a party in interest is to be litigated and to be given an opportunity to be heard by the adjudicating body before he is made to suffer any deprivation of a legal right. Both are necessary. There was included in table 6 a classification of sterilization laws on the basis of whether or not they granted the right to be heard during the adjudication. The following table, No. 7, deals with the other necessary element for constitutional sufficiency, i. e., the presence or absence of provision for notice of the contemplated litigation. It will be noted that less than two-thirds of the compulsory

laws contain a provision requiring advance notice to the person, but that six of the laws which do not require such notice do require notification of a decision to sterilize, although such notification is not required to be given to the person himself in all these six statutes. These six laws uniformly direct a delay in the execution of the decision to permit opportunity for appeal. It will also be seen that six laws require neither advance notice of the proceeding nor notification of the decision, but in two of these laws the sterilization inquiry is incidental to a court commitment proceeding so that any notice which is required by the commitment law is, in effect, notice that the matter of sterilization is to be determined upon.

TABLE 7.—*Requirement of notice*

State laws	Require advance notice of proceeding by which decision is made as to whether person shall be sterilized to—			Require no advance notice of proceeding but do require notification of decision to sterilize	Require no advance notice of proceeding nor notification of decision to sterilize
	Person	Guardian and/or other enumerated persons	Parent if person be a minor		
Compulsory laws					
Alabama					×
Arizona [1]			×		
California (1913)					×
California (1937)					×
Connecticut					×
Delaware				× [2]	
Georgia		×			
Idaho	×				
Indiana (1927)	×	×	×		
Indiana (1931)					× [3]
Indiana (1935)					× [3]
Iowa	×				
Kansas	×	×			
Maine				× [4]	
Michigan	× [5]	×			
Mississippi	×	×	×		
Montana	×	×			
Nebraska	×	×	×		
New Hampshire	×	×			
North Carolina	× [6]	×	×		
North Dakota	×	× [7]	×		
Oklahoma (1931)	×	×	×		
Oklahoma (1935)	×				
Oregon				× [8]	
South Carolina	×	×			
South Dakota	× [9]	× [9]		× [9]	
Utah	×	×	×		
Virginia	×	×	×		
Washington				× [10]	
West Virginia	×	×			
Wisconsin				× [11]	
Total	18	16	9	6	6

[1] Requires notice to legal guardian.
[2] To spouse, parent, or guardian, and if unknown, to person with whom last resided.
[3] Sterilization inquiry incidental to court commitment proceeding.
[4] To parent, spouse, guardian, or attorney appointed for the purpose.
[5] Only when person above age of 10 years.
[6] May be dispensed with if parent, guardian, spouse, or next of kin requests sterilization.
[7] Only in case of insane and feeble-minded.
[8] To person; or in case of insane or feeble-minded to guardian, nearest kin or friend, or custodial guardian.
[9] Advance notice of proceeding required only in the case of noninstitutionalized persons.
[10] To person; or in case of insane to guardian, nearest kin, or custodial guardian.
[11] To spouse, parent, or guardian; and, if unknown, to person with whom last resided.

TABLE 7.—*Requirement of notice*—Continued

State laws	Require advance notice of proceeding by which decision is made as to whether person shall be sterilized to—			Require no advance notice of proceeding but do require notification of decision to sterilize	Require no advance notice of proceeding nor notification of decision to sterilize
	Person	Guardian and/or other enumerated persons	Parent if person be a minor		
Voluntary laws					
California		× [12]	× [12]		
Maine	× [13]	× [13]			
Minnesota	× [14]	× [14]			
Vermont	× [15]	× [15]			
Total	3	4	1	0	0
Total, all laws	21	20	10	6	6

[12] Parent or guardian requests sterilization of child or ward.
[13] Consent of person, if mentally capable, or of nearest relative or guardian necessary.
[14] In the case of a feeble-minded person, consent of spouse, nearest kin, or State board of control necessary; in the case of an insane person, the consent of the person and of the spouse, nearest kin or guardian must be obtained.
[15] Consent of person, if mentally competent, or of natural or legal guardian is necessary.

Basis of Decision

Probably in no other feature of sterilization laws is there such great diversity as in the use of phraseology to set forth the basis on which persons shall be sterilized or, in other words, the purpose sought to be accomplished by the statutes. Table 8 is devoted to a summary of this feature of the laws. Examination of this table shows that seven of the laws are silent as regards specific language to show the purpose or purposes for sterilizing selected persons, or merely mention the inadvisability of procreation by the persons as the basis, or that sterilization is deemed advisable and beneficial to the person. Other laws are more specific in this respect, and many of them contain various combinations of reasons, some more inclusive than others. While the primary purpose of all eugenic sterilization laws is, of course, the effort to improve the inborn or native qualities of a race or breed through preventing procreation by certain types of defective persons, it is particularly significant to note that in all except eight of the compulsory sterilization laws there has been included, as a basis for sterilization, the improvement in the condition of the person himself, and two laws include in the reasons for sterilization even improvement in the moral condition of the person. Some of the laws specifically provide that in addition to these bases or reasons for sterilization (as set forth in the table), the adjudicating agency must find that the person is in fact a defective person within the meaning of the act, which feature of the laws is covered by table 1.

TABLE 8.—*Basis of decision*

State laws	By laws of heredity person is probable potential parent of socially inadequate offspring likewise afflicted	Procreation would produce children with inherited tendency to enumerated deficiencies	Best interests or welfare of society	Offspring would become social menace or wards of State	To protect society from the menace of procreation	Procreation inadvisable, sterilization deemed advisable, or law silent	Beneficial to or for best interests of person	May be sterilized without detriment to health	No probability condition of person will improve
Compulsory laws									
Alabama						×			
Arizona	×		×				×	×	
California (1913)							[1] ×		
California (1937)						×			
Connecticut		×					[2] ×		×
Delaware						×			
Georgia		×							
Idaho		×		×	[3] ×		[4] ×		×
Indiana (1927)			×				×	×	
Indiana (1931)			×				×		
Indiana (1935)			×				×		
Iowa		×		×	[3] ×		[4] ×		×
Kansas		×					[3] ×		×
Maine		×							
Michigan		×	×	×			×		×
Mississippi	×		×				×	×	
Montana					×		[4] ×		
Nebraska		×		×	×				
New Hampshire	×		×				×	×	
North Carolina		×	×				[1] ×		
North Dakota		×		×	×		[4] ×		×
Oklahoma (1931)	×		[5] ×				×		×
Oklahoma (1935)[6]								×	
Oregon		×		×	[3] ×		[4] ×		×
South Carolina	×		×				×	×	
South Dakota [7]						[7] ×			
Utah [8]	×		×				×	×	
Virginia	×		×				×	×	
Washington		×			×		[4] ×		×
West Virginia	×		×				×	×	
Wisconsin						×			
Total	8	12	13	6	7	5	22	9	9
Voluntary laws									
California						×			
Maine		×					[2] ×		
Minnesota						×			
Vermont		×	×				×	×	
Total	0	2	1	0	0	2	2	1	0
Total, all laws	8	14	14	6	7	7	24	10	9

[1] Beneficial to physical, mental, or moral condition.
[2] Improvement in physical or mental condition.
[3] Or from the acts of the person.
[4] Betterment of the physical, mental, neural, or psychic condition.
[5] Or that the patient will continue to be a public or partial public charge or be supported in any manner or form by charity.
[6] Requires also a finding that the person is an habitual criminal as defined in the act.
[7] In the case of noninstitutionalized persons, there is required a finding that the person is probably incapable of properly performing the duties of parenthood due to feeble-mindedness and also that the person is of such age as to be capable of procreation; whereas, in the case of institutionalized persons, the law is silent, other than a finding that the person is of procreative age.
[8] Or is "habitually sexually criminal" or "is afflicted with degenerate sexual tendencies."

Appeals

In table 5 there was included a classification of sterilization laws as regards adjudication agencies, and it is the purpose of table 9 to show which laws specifically provide a method whereby adverse decisions of such agencies may be questioned in a superior tribunal. In the preparation of this table, laws which designate the "supreme court" as such tribunal are listed as authorizing recourse to the highest State court. An unusual feature of eugenic sterilization laws is that nearly half of the compulsory statutes permit the State also to question decisions by the adjudicating agencies. Another feature which warrants special mention is the fact that under all laws which provide for questioning the original decisions of the adjudicating agencies the method provided is that of the appeal, which method, generally speaking, permits the appellate body to consider alleged errors of fact as well as errors of law, as distinguished from the method known as the writ of error which is predicated on alleged errors of law only. Approximately one-half of the laws which provide such appeal specifically permit, as shown in column 5, the receipt of additional evidence or proof of facts by the judicial body of original or primary appeal.

TABLE 9.—*Appeals*

State laws	Provide for appeal			Provide for appeal by State	Permit receipt of additional evidence by court of inferior jurisdiction upon appeal	Permit court of inferior jurisdiction to affirm, revise, or reverse order appealed from
	None	To court of inferior jurisdiction only	To highest State court			
Compulsory laws						
Alabama	×					
Arizona			×	×	×	×
California (1913)	×					
California (1937)	×					
Connecticut	×					
Delaware	×					
Georgia			[1] ×		[2] ×	
Idaho			×	×		
Indiana (1927)			×		×	×
Indiana (1931)			[3] ×			
Indiana (1935)			[3] ×			
Iowa			×	×		
Kansas	×					
Maine		[4] ×				×
Michigan			[5] ×			
Mississippi			×	×	×	×
Montana		×		×		
Nebraska			×			
New Hampshire			×	×	[6] ×	[7] ×

[1] Appeal lies first to the county superior court and notification that the person or his legal representative has the right to appeal must be given; if no near relative is known and no legal guardian has been appointed, such notice must be sent to the solicitor general of the county court of residence who is required to protect the rights of the person.

[2] Trial de novo and either party may have jury determination.

[3] Provides an appeal "as in other civil proceedings."

[4] Notice to person of right to appeal must be given; and if appellant is upheld, case may not be initiated again within 1 year of court decree.

[5] Same right of appeal "as is provided by statute for appeals from orders of probate court."

[6] If necessary to preserve constitutional right or justice requires, supreme court to which appeal is taken direct may consider evidence of facts which have occurred since hearing or which, by reason of accident, mistake, or misfortune, could not have been offered before board.

[7] Supreme court, to which appeal is taken direct, may affirm, revise, or reverse.

TABLE 9.—*Appeals*—Continued

State laws	Provide for appeal			Provide for appeal by State	Permit receipt of additional evidence by court of inferior jurisdiction upon appeal	Permit court of inferior jurisdiction to affirm, revise, or reverse order appealed from
	None	To court of inferior jurisdiction only	To highest State court			
Compulsory laws—Continued						
North Carolina [8]			×	×	[9] ×	×
North Dakota		×				
Oklahoma (1931)			×	×	×	×
Oklahoma (1935)			×	×		[10] ×
Oregon			×	×		
South Carolina			×	×		
South Dakota		[11] ×				
Utah			×	×	×	×
Virginia			×	×	×	×
Washington		×				
West Virginia			×	×	×	[12] ×
Wisconsin	×					
Total	7	5	19	14	10	11
Voluntary laws						
California	×					
Maine	×					
Minnesota	×					
Vermont	×					
Total	4	0	0	0	0	0
Total, all laws	11	5	19	14	10	11

[8] If appellant is upheld by county superior court, such decision, unless appealed from, annuls sterilization order and the case may not be initiated again within 1 year of court decree unless person, next of kin, or the legal representative consents.
[9] Permits hearing of appeal "upon affidavit or oral evidence."
[10] The original adjudication is by the State district court and upon appeal to the supreme court such court may "reverse, vacate or affirm" the judgment.
[11] Notice of right to appeal must be given.
[12] In whole or in part.

Records, Studies, and Reports

Table 10 sets forth a summary as regards the presence or absence in sterilization laws of specific requirements of record keeping of the adjudication proceedings (during which decisions were made on the necessity of sterilizing defective persons), of records of sterilized persons, and of studies and reports on the results of sterilization operations. It will be noted that, while the laws uniformly require some record of the adjudication to be kept, less than half of the compulsory laws require the keeping of records of sterilized persons, and the number of laws that direct the making of studies and reports of the results of operations is negligible. Five laws contain provisions bearing on the matter of making public the names of sterilized persons.

TABLE 10.—*Records, studies, and reports*

State laws	Record of proceedings required [1]	Record of sterilized persons required [2]	Studies of effects of operation required	Reports of results of studies required	No records, studies, or reports required
Compulsory laws					
Alabama					×
Arizona	×				
California (1913)					×
California (1937)					×
Connecticut					×
Delaware		×	×	[3] ×	
Georgia		×			
Idaho	×				
Indiana (1927)	×				
Indiana (1931)		×			
Indiana (1935)		×			
Iowa	×				
Kansas	×				
Maine	×	×			
Michigan	×				
Mississippi	×				
Montana		×	×		
Nebraska	×	×			
New Hampshire	×	×			
North Carolina	×	×			
North Dakota	×	×	[4] ×	[5] ×	
Oklahoma (1931)	×				
Oklahoma (1935)		×			
Oregon	×				
South Carolina	×				
South Dakota	×				
Utah	×				
Virginia	×				
Washington	×				
West Virginia	×				
Wisconsin	×	×	×	[6] ×	
Total	21	12	4	3	4
Voluntary laws					
California					×
Maine	×				
Minnesota	×				
Vermont	×	×			
Total	3	1	0	0	1
Total, all laws	24	13	4	3	5

[1] Variously stated as preservation of record evidence and reduction to writing of oral evidence; written findings, conclusions and orders; full minutes; preservation of original documents and statements of physicians; complete permanent record; written consent of person; certificate showing basis of decision; record taken upon examination, etc.

[2] Five laws provide relative to public inspection as follows: Georgia, not open to public inspection except for such purposes as the State board of eugenics may approve; Maine, only for purposes approved by State officials with assurance that names will not be made public; Nebraska, open to inspection; New Hampshire, not open to inspection; and North Carolina, only for such purposes as court may approve.

[3] Biennially by State board of charities to legislature with recommendations.

[4] Chief medical officer required to make observation of each sterilized person "particularly with the view of ascertaining the effect of such operation upon the moral, mental, and physical condition" of such persons.

[5] Annually by superintendents to board of examiners.

[6] Semiannually after performance of operation of condition of person and effect of operation by superintendent to State board of control and biennially by board.

Civil and Criminal Liability

In 21 compulsory laws and 1 voluntary law, there are provisions rendering immune to civil or criminal liability surgeons or other persons who participate in the proceedings, when they act in accord-

ance with the procedure set forth in the law.[5] Six compulsory laws contain penalty provisions for stated violations of the act.[6]

Miscellaneous Provisions

Six[7] laws provide in effect that the individual shall have the right to select the physician who is to perform the operation. Three[8] laws provide that nothing contained in the law shall be construed as interfering with any person's religious practice which treats or administers to the sick or suffering by purely spiritual means but that such treatment or administration must not interfere with the operation of the law. The Montana law defines "heredity" as "the transmission, through spermatozoon and ovum, of physical, physiological, and psychological qualities from parents to offspring." The New Hampshire law renders inapplicable to sterilized persons the provision of the State statute prohibiting the marriage of certain defective persons; and the Georgia law empowers the State board of eugenics to promulgate such rules and regulations as are necessary for the enforcement of the act.

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[5] Compulsory laws: Arizona, California (1937), Georgia, Indiana (1927 and 1931), Kansas, Maine, Michigan, Mississippi, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma (both laws), South Carolina, South Dakota, Utah, Virginia, Washington, and West Virginia. Voluntary law: Minnesota. Of the compulsory laws, 5 (Maine, Michigan, North Carolina, North Dakota, and Washington) provide that such exemption does not extend to negligence in the performance of the operation; and 2 (Indiana, 1927 and 1931) provide that the exemption does not extend to any illegal or criminal act which may be incidental or collateral to such participation. In addition to the 21 compulsory laws that contain provisions against civil or criminal liability, the 1935 Indiana law contains a civil liability exemption provision.

[6] Violations and maximum punishment are as follows: Connecticut, for performing or permitting operation not in accordance with act, $1,000 fine or 5 years' imprisonment or both; Kansas, for performing operation not in accordance with act, $100 to $500 fine and 6 months to 1 year imprisonment; Montana, for performing operation not in accordance with act, $1,000 fine or 5 years' imprisonment or both; Nebraska, failure of board members to enforce act causes forfeiture of office, liability to $2,000 fine, and 3 to 6 months' confinement; Oklahoma (1935), for filing of false report by physician designated to perform an operation, 5 years' imprisonment; Utah, performing operation not in accordance with act is punishable as a felony.

[7] Georgia, Iowa, North Carolina, Oregon, South Carolina, and South Dakota. Under the South Dakota law, this right exists only as regards persons in the population at large; and under the Georgia and North Carolina acts the right is extended to the selection of a physician for consultation.

[8] Idaho, Iowa, and Oregon.

PART II. REVIEW OF COURT DECISIONS

General

As has probably been the history of all social movements that result in legislation adversely affecting fundamental civil rights, the constitutionality of eugenic sterilization statutes was promptly questioned in the courts. While the first such law was enacted in 1907, it was a statute passed in 1911 that was the first to be tested, two years after its passage.

Eugenic sterilization statutes contained elements which had counterparts in other types of legislation, but they were essentially unique, primarily because they required, as a basis for judicial pronouncement, an evaluation of the science of eugenics. Moreover, while these laws required a finding that certain persons were feebleminded, insane, etc., which element was present in commitment laws, they differed from commitment laws in that an erroneous adjudication once carried into effect could not be rectified in the same measure as an error in committing a person could be corrected. Also, while sterilization statutes were somewhat analogous, in legal aspects, to vaccination laws, these latter laws were aimed primarily toward prevention of disease and they did not, like sterilization enactments, seek to remove a biologic function; and they did not, as in the case of females surgically treated under sterilization laws, involve the risk of a major operation. Another reason why eugenic sterilization laws were considered unique was that while they interfered with the sexual function as did punitive sterilization statutes the element of punishment was entirely lacking, and, incidentally, the failure to keep this distinction in mind proved to be a source of considerable confusion in judicial thinking. The net result of these considerations was, therefore, clear indication in the earlier decisions that the individual judges, who were confronted with the task of saying whether sterilization laws were a proper exercise of the police power by the legislatures, realized the many possibilities for benefit and harm to the social order that these laws presented and approached the problem with extreme caution.

Any statement as to whether or not "sterilization is constitutional" must necessarily take into consideration the three phases of the problem, i. e., (1) the validity of eugenic sterilization in principle, (2) compliance with procedural requirements such as "due process of law" and "class legislation" provisions, and (3) application to individuals.

including interpretation of various statutory provisions. Moreover, each of these phases must be viewed not only in terms of restrictions which may be contained in the Federal Constitution but also in the light of safeguards in the respective State constitutions. In other words, an order to sterilize a given individual might be entirely valid under a particular State law, State constitution, and the Federal Constitution, whereas such an order issued under another State law and/or constitution might be repugnant to State and/or Federal constitutional mandate in respect to one or more of the three phases mentioned above.

All that may be affirmatively said about the constitutionality of the principle of eugenic sterilization is that one such law was held valid by the Supreme Court of the United States and that seven other such laws were held valid by the highest courts of the respective States. As regards the negative of such principle, it may be stated that no court of last resort has held that a State could not enact a sterilization law. Only a New York inferior court and a Federal district court have denied that a State could enact such a law, but the New York court qualified its decision to some extent and the Federal court erroneously used as a basis for its decision a State constitutional provision which prohibited cruel and unusual punishment. As regards this objection to eugenic sterilization, the New York court stated that sterilization as provided by the New York law was not a punishment; nevertheless, it confined its decision to the law as it affected only the noncriminal persons made subject to its provisions, and while the Nebraska court similarly restricted its decision it is pointed out that the Nebraska law did in fact contain a separate punitive sterilization provision. The New Jersey court also possibly had some misgivings about the substantive validity of sterilization since it stated that it was confining its decision to the law in respect to its application to noncriminal persons, and the Indiana court's decision was likewise stated to be made aside from any question of punishment which might be involved under the statute. In contrast to the holdings of the Federal court and the New York court, the courts of the States of Michigan (second and third decisions), Virginia, Kansas, Utah, Nebraska, Idaho, and Oklahoma have held valid sterilization laws of the respective States, and the United States Supreme Court has held valid the Virginia statute. In addition, the justices of the Alabama court, while viewing a bill as invalid owing to procedural defects, has conceded the validity of sterilization. Of these decisions, those of the courts of Michigan, Virginia, Utah, Nebraska, Idaho, Oklahoma, and Alabama have specifically stated that sterilization for eugenic purposes is not a cruel or unusual punishment within the meaning of the respective State constitutions,

and the first decision by the Michigan court contained a similar statement.

In the matter of procedural defects, the earliest objection was that these statutes in applying only to the institutionalized portions of the enumerated groups of defectives failed to furnish to such portions the equal protection of the law or, as sometimes expressed, amounted to class legislation. This objection was upheld in the first three decisions on sterilization laws by State courts, i. e., those of New Jersey, New York, and Michigan, but in subsequent decisions the courts of Virginia, Kansas, Utah, Nebraska, and Oklahoma, and the Supreme Court of the United States have ruled to the contrary. Another procedural objection was that due process of law was not afforded in that the person was not given the right to a hearing on notice. This defect resulted in adverse decisions on laws by the courts of Indiana and North Carolina and on a bill by the Alabama justices. Such a defect was also pointed out by the Federal district court as an additional reason for holding the Iowa statute invalid. On the other hand, laws which provided such hearing on notice were held valid by the courts of Michigan, Virginia, Kansas, Utah, Nebraska, Idaho, and Oklahoma in addition to the Supreme Court of the United States notwithstanding the fact that in all of these laws, except those of Michigan and Idaho, the decision to sterilize a defective person was permitted to be made by an administrative board. In the Kansas decision, the court stated that a provision in the law for appeal to the courts was not a necessary element of due process of law, whereas in the Alabama opinion an opposite view was taken. On the objection that the laws were defective as an unconstitutional delegation of judicial power to the executive branch of the government, the courts of Idaho and Oklahoma ruled that the statutes were valid, the Idaho court showing that the board's decision was only recommendatory and the Oklahoma court pointing out that a court proceeding on appeal was provided and also that another provision of the constitution specifically permitted the vesting of such powers in boards. In addition to these decisions, a dissenting opinion of a justice of a California district court of appeal questions the validity of a statute on the basis of lack of requirement of notice and hearing and the attempt to give finality to an administrative board's decision.

Relative to the interpretation and application of sterilization statutes to individuals, a review of the decisions shows that the courts of New York, Michigan (second decision), and Utah vacated or reversed a sterilization order in the case at bar for the reason that the record did not support the finding of the adjudicating agency as regards compliance with the procedural requirements of the act or because of lack of evidence. However, in the decisions of the Virginia, Kansas, Nebraska, Idaho, and Oklahoma courts, and the

Supreme Court of the United States, the order to sterilize the person who brought the appeal was affirmed after review of the proceedings. The Utah decision also contained an interpretation of the statutory provision that the operation must be shown to be a benefit to the alleged defective person and as to the right of the State to perform therapeutic operations on persons made subject to the law; the Nebraska court interpreted the law as to the types of operations intended by the legislature where none were specified in the act and as to the necessity of distinguishing between hereditary and acquired defects; and the Oklahoma court dealt with a provision to the effect that a person could be sterilized only when it was without detriment to his general health.

In the following review of court decisions on eugenic sterilization, each decision is treated in the order in which it was rendered, and the summary sets forth the date and title of the decision, the court rendering the decision, the date of the law and the State enacting it, whether or not the statute was held valid, a statement of the relevant facts, the provisions of the statute relating to the question decided, and some of the statements by the court in support of its decision.

The New Jersey Decision

On November 18, 1913, the Supreme Court of New Jersey, in the case of *Smith* v. *Board of Examiners of Feeble-minded*, rendered the first decision on a eugenic sterilization law in a case which arose under the statute adopted in that State in 1911. The act was held invalid and is not in effect at the present time. It authorized the sterilization of institutionalized persons and did not apply to the population at large.

Statute held defective as failing to furnish equal protection of law.—The court held that, since the act did not apply to persons residing in the general population, it failed to provide equal protection of the law to institutional persons, saying: "The conclusion we have reached is that without regard to the power of the State to subject its citizens to surgical operations that shall render procreation by them impossible, the present statute is invalid in that it denies to the prosecutrix of this writ the equal protection of the laws to which, under the Constitution of the United States, she is entitled."

Sterilization principle not adjudicated.—With reference to the validity of the sterilization principle, the court, after touching upon the menace to the life and liberty of the individual inherent in the doctrine of sterilization, expressed the view that "* * * it is not asking too much that an artificial regulation of society that involves these constitutional rights of some of its members must be accomplished, if at all, by a statute that does not deny to the persons injuriously affected the equal protection of the laws guaranteed by the Federal

Constitution." The court also confined its decision to the noncriminal persons made subject to the law and premised its decision by saying that "the statute, it will be observed, applies to criminals, in which respect it does not concern us since the prosecutrix is an epileptic, an unfortunate person but not a criminal."

The Federal District Court Decision on the Iowa Law

The next decision was rendered on June 24, 1914, by the District Court of the United States in and for the Southern District of Iowa, in the case of *Davis* v. *Berry*. The law involved was a 1913 Iowa statute; the act was held invalid and was replaced by a statute enacted 2 years later. An appeal was taken by the State to the Supreme Court of the United States and, in the case of *Berry* v. *Davis*, that Court on January 15, 1917, stated that the decision had become superfluous and the case moot because of subsequent legislation enacted while the case was pending. The act applied to enumerated classes of persons and made mandatory a sterilization operation on any inmate of a penal institution who had been twice convicted of a felony; an administrative board was granted authority to select individuals for sterilization and no notice or opportunity for a hearing was provided. The plaintiff had been convicted of a felony on two occasions, was serving his second sentence in the State prison, and an order directing that he be sterilized had been made.

Law held unconstitutional as providing for cruel and unusual punishment.—The court held this eugenic sterilization law unconstitutional as involving the infliction of cruel and unusual punishment in violation of the Iowa constitution. After touching upon the history of castration as a punishment for crime, the court said that the same shame, humiliation, degradation, and mental torture were involved in the current law as under the older penal statute and that "our conclusion is that the infliction of this penalty is in violation of the Constitution which provides that cruel and unusual punishment shall not be inflicted." The court also stated that the law amounted to a bill of attainder, which was defined by the court as a "legislative act which inflicts punishment without a jury trial," in violation of the Federal Constitution.

Defect of failing to provide due process of law.—The court then pointed out that the law also violated the fourteenth amendment to the Federal Constitution in that it deprived the plaintiff of a civil right without due process of law. The court's view that the law was defective also in this procedural feature is summarized in the following words: "In the case at the bar the hearing was a private hearing, and the prisoner first knew of it when advised of the order. Due process of law means that every person must have his day in court, and this

is as old as Magna Charta; that some time in the proceedings he must be confronted by his accuser and given a public hearing."

The New York Decision

The next reported decision was that by the Supreme Court, Albany County, rendered on March 5, 1918, in the cases of *In re Thomson et al.*, and *Osborn* v. *Thomson et al.*, wherein the New York law, enacted in 1912, was held defective. This decision was affirmed by an appellate court on July 1, 1918, and the statute was repealed in 1920 while an appeal by the State was pending in the highest State court. This statute applied only to certain institutionalized persons and the case came before the court for review of the proceedings and sterilization order; in the same proceeding, the court dealt with a petition for an order perpetually enjoining the performance of the operation.

Law held defective as class legislation.—In holding the statute invalid and enjoining the operation, the court pointed out that the person was not given the equal protection of the laws, "having in mind many others situated as he is who are not within the walls of a public institution, to which equal protection he is entitled with them. * * * It seems, therefore, that the provisions of the Federal Constitution to which this law is offensive is that part of the fourteenth amendment which declares 'that no state * * * shall deny to any person within its jurisdiction the equal protection of the laws.' The law certainly denies to some persons of a class and similarly situated the protection which is afforded to others of the same class."

Sterilization as State economy measure held unconstitutional.—The court also denied the constitutionality of the sterilization principle, on the basis that the purpose of the enactment seemed to be to save expense in the operation of eleemosynary institutions and said that, as it thus understood the purpose of the law, "Such does not seem to this court to be the proper exercise of the police power."

Law considered as nonpunitive in its application to noncriminal persons.—The court also drew a distinction between sterilization as a penalty and as a eugenic measure, stating that "the operation upon the feeble-minded is in no sense in the nature of a penalty and, therefore, whether it is unusual and cruel punishment is not involved." However, the court pointed out that the person involved in the case at bar was not a malefactor and that "the statute under consideration concerns certain classes of criminals as well as defectives. In the consideration of the question here we have properly confined our thoughts to the facts which have developed in the testimony, and those facts only relate to the feeble-minded."

Sterilization order reversed.—Before ruling on the constitutionality of the law, the court reviewed the proceedings of the board and re-

versed the board's order. After summarizing the testimony before the board, the experience and qualifications of the board members, and the purposes and results of sterilization operations the court said that an operation on the particular inmate was "not justified either upon the facts as they today exist or in the hope of benefits to come. The members of the board of examiners apparently know very little about the subject. They have given it no particular study. They are not, in the opinion of the court, justified in the determination which they have reached, and, therefore, upon review of the determination which the board has made, this court reverses the same."

The First Michigan Decision

The Supreme Court of Michigan on March 28, 1918, passed upon the sterilization law enacted in that State in 1913, the case being that of *Haynes* v. *Lapeer Circuit Judge*. The statute, which applied only to inmates of institutions, was held void and was replaced by one enacted in 1923.

Class legislation objection sustained.—The court stated that the only argument against the validity of the law was that "it is capricious and discriminatory class legislation." The following quotation summarizes the court's reason for holding the act invalid: "* * * this law as framed does not afford, in its scope, those affected by it that equal protection under the laws guaranteed by the Constitution, and so limits the class of defective covered by its provisions as to be clearly class legislation without substantial distinction within constitutional inhibition."

Eugenic and punitive laws differentiated as to purpose.—This Michigan decision also brought out the difference between the purposes of eugenic laws and those which authorized punitive sterilization. In distinguishing between the question raised under a Washington punitive statute and the act under consideration, the court arrived at the conclusion that "the case, while illuminating in some respects, involved primarily a question foreign to the issue before us, and is of remote application, for under the statute involved here the proposed operation is not provided as a penalty in punishment of crime."

The Indiana Decision

There followed on May 11, 1921, the decision of the State Supreme Court on the Indiana law in the case of *Williams et al.* v. *Smith*. This law had been enacted in 1907 and was the first sterilization law enacted in the United States; following the adverse decision of the court in this case, it was superseded by the current law. The statute applied to inmates only and provided for the selection of individuals by a board without prior notice of the contemplated adjudication.

Law held defective as failing to provide due process of law.—In holding the statute invalid, the court cited the Federal decision on the Iowa

law and quoted a portion thereof relating to the procedural inadequacy of the Iowa act. The particular defects of the Indiana statute were, in the view of the court, that the person "has no opportunity to cross-examine the experts who decide that this operation should be performed on him. He has no chance to bring experts to show that it should not be performed; nor has he a chance to controvert the scientific question that he is of a class designated in the statute." The court said that "it is very plain that this act is in violation of the fourteenth amendment of the Federal Constitution in that it denies appellee due process." The decision was stated to be "wholly aside from the proposition of cruel and unusual punishment, and infliction of pains and penalties by the legislative body through an administrative board."

The Second Michigan Decision

The first decision in which a eugenic sterilization law was held valid was rendered on June 18, 1925, by the Supreme Court of Michigan in the case of *Smith* v. *Command*. The statute, which was replaced by the current law, was enacted in 1923 and although the act was held valid the sterilization order was vacated. The constitutionality of this statute was again raised in the case of *In re Salloum* and, in its decision rendered October 22, 1926, the Michigan court adhered to this ruling. The statute applied only to persons "found and adjudged to be defective by a court of competent jurisdiction," and it permitted the sterilization order to be made by a court "at the time when the person is adjudged defective or at any later time."

Law applying to general population held valid.—In holding the statute constitutional the court reviewed and quoted some of the findings of biological and medical authorites, and expressed the view that from this and other evidence it definitely appeared that science had demonstrated to a reasonable degree of certainty the hereditary quality of feeble-mindedness. It also called attention to estimates of the number of defective persons in the State for whom no accommodations were available in State institutions, and concluded that, under the circumstances, it was not only the legislature's undoubted right but also its duty to enact some legislation that would protect the people and preserve the race from the known effects of the procreation of children by cacogenic persons. Statement was also made that the law did not violate the State constitution which provided that institutions for certain defective persons shall be maintained, the law being viewed as additional legislation.

Law viewed as not cruel or unusual punishment.—In answer to the claim that this law violated the State constitution which prohibited the infliction of cruel or unusual punishment, the court said that the only purpose of this constitutional provision was to place a limitation

on the power of the legislature in fixing punishment for crimes, that there was "no element of punishment involved in the sterilization of feeble-minded persons," and that it was analogous to compulsory vaccination. The court therefore said that "it is therefore plainly apparent that the constitutional inhibition against cruel or unusual punishment has no application to the surgical treatment of feeble-minded persons." The court also pointed out that the eighth amendment to the Federal Constitution does not apply to State legislatures.

Failure to include "the insane" as defective not unconstitutional class legislation but classification based on financial ability to support defective offspring invalid.—Another objection to the statute answered by the court was that this law failed to provide the equal protection of the law required by constitutional mandate. The basis of this objection was twofold, namely, (1) that the law excepted the insane, and it did not therefore apply to all mental defectives, and (2) that the law applied, in one feature of the classification of defective persons, only to those of the feeble-minded class who are unable to support any children they might have and whose children would thus probably become public charges. The court answered the first of these two points by showing that the law, in its application to all persons adjudged defective by a court of competent jurisdiction, provided a reasonable classification; on the other hand, the court agreed with the second basis of objection and ruled that this feature of the classification of defective persons was invalid, but stated that the provision did not affect the validity of the law.

Statute considered as providing due process of law.—The court pointed out that the law required ample notice of the time and place of hearing by personal service on the person and others acting in his behalf, that a judicial proceeding was made necessary and opportunities to defend with the right of appeal were provided. "Nothing further," said the court, "is required by the 'due process of law' clause of the Constitution."

Sterilization order vacated owing to defective administration.—Before vacating the sterilization order in the case at bar, the court said that the only serious question is "whether the fact that defective mentality is of such a character and due to such causes that children procreated by a person so afflicted will have an inherited tendency to mental defectiveness, can be determined with reasonable certainty." Stating that the responsibility of determining that a surgical operation shall be performed rests upon the court and not on the physicians appointed to examine the person, the court vacated the sterilization order owing to the State's failure to comply with the law as regards the appointment of a guardian ad litem, the summoning of witnesses including the examining physicians, and other jurisdictional requirements.

The Virginia Decision

There was next rendered, on November 12, 1925, the decision of the Supreme Court of Appeals of Virginia, in the case of *Buck* v. *Bell*, on the current law. The court held that the statute was "a valid enactment under the State and Federal constitutions." The Virginia statute applies only to institutionalized persons and it authorizes the adjudication to be made by an administrative board.

Law applying only to institutionalized persons held valid and not objectionable as class legislation.—In holding the act valid, the court ruled adversely on the objection that the statute denied to institutional inmates the equal protection of the law. Expressing the view that the law did not divide a "natural class of persons into two" and discriminate against one of these two subclasses, the court said, "There can be no discrimination against the inmate of the colony, since the woman on the outside, if in fact feeble-minded, can, by the process of commitment, and afterwards a sterilization hearing, be sterilized under the act."

Hearing on notice before board considered as due process of law.—It defined due process of law as "An adjudication by an impartial tribunal vested with lawful jurisdiction to hear and determine the questions involved, after reasonable notice to the parties interested and an opportunity for them to be heard," observed that the statute vested jurisdiction in the board, and that the proceeding of the board was in conformity with the statute as regards notice of the hearing and opportunity to present evidence. The court therefore concluded that the act complies with the requirements of due process of law as contained in the fourteenth amendment to the Federal Constitution.

Law stated to be not penal.—The court also showed that an objection of cruel and unusual punishment in violation of the State constitution could not be sustained, saying, "The act is not a penal statute. The purpose of the legislature was not to punish but to protect the class of socially inadequate citizens named therein from themselves, and to promote the welfare of society by mitigating race degeneracy and raising the average standard of intelligence of the people of the State."

The United States Supreme Court Decision on the Virginia Law

An appeal from this judgment was taken to the Supreme Court of the United States, which rendered its first and only decision on sterilization in the case of *Buck* v. *Bell, Superintendent*, on May 2, 1927. Stating that "The case comes here upon the contention that the statute authorizing the judgment is void under the fourteenth amendment as denying to the plaintiff in error due process of law and equal protection of the laws," the Court ruled that the law was valid and

affirmed the judgment of the Virginia court. As previously stated, the statute under consideration is the current Virginia law.

Sterilization principle held valid.—As to the validity of the principle of sterilization the Court said, "The attack is not upon the procedure but upon the substantive law. It seems to be contended that in no circumstances could such an order be justified. It certainly is contended that the order cannot be justified upon the existing grounds. The judgment finds the facts that have been recited and that Carrie Buck 'is the probable potential parent of socially inadequate offspring, likewise afflicted, that she may be sexually sterilized without detriment to her general health, and that her welfare and that of society will be promoted by her sterilization,' and thereupon makes the order. In view of the general declarations of the legislature and the specific findings of the Court obviously we cannot say as matter of law that the grounds do not exist, and if they exist they justify the result. We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. *Jacobson* v. *Massachusetts*, 197 U. S. 11. Three generations of imbeciles are enough."

Due process of law clause satisfied by Virginia law.—The Court denied, in the following words, the claim that the law fails to provide due process of law: "There can be no doubt that so far as procedure is concerned the rights of the patient are most carefully considered, and as every step in this case was taken in scrupulous compliance with the statute and after months of observation, there is no doubt that in that respect the plaintiff in error has had due process at law."

Virginia statute not objectionable as class legislation.—The Court refused also to accept the reasoning that the act, in applying only to the institutionalized persons, denies to inmates of institutions the equal protection of the laws by saying, "But the answer is that the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow. Of course so far as the operations enable those who otherwise must be kept confined to be returned to the world, and thus open the asylum to others, the equality aimed at will be more nearly reached."

The Kansas Decision

The first sterilization decision following this ruling by the highest Federal court was rendered by the Supreme Court of Kansas on October 6, 1928, in the case of *State* v. *Schaffer*. In this decision the current Kansas law was held valid. It applies only to institutional inmates and provides for selection by a board.

Law held valid as providing due process of law and as being not class legislation.—To the contentions that the law was class legislation the court answered that the Supreme Court of the United States had decided such a law was not in conflict with the Federal Constitution. It was also contended that the law discriminated between those who are inmates of institutions; in other words, that under this law only selected individuals of the institutional population would be sterilized and that such selected individuals are not accorded the equal protection of the law. The court denied that this was discrimination. It then discussed the competence of the tribunal provided by the statute and the procedure, including notice, required by the act, and concluded that the statute does not violate any provision of the State constitution.

Provision for appeal unnecessary to due process of law.—Another point relied on to show that the act is invalid was that it contains no provision for an appeal to a court from the decision of the administrative board. The court disposed of this contention by quoting from a decision of the Supreme Court of the United States which declares "due process of law is not necessarily judicial process, nor is the right of appeal essential to due process of law."

The Utah Decision

The next decision rendered was by the Utah Supreme Court in the case of *Davis* v. *Walton* on April 9, 1929, in which the current law of that State was held constitutional although the sterilization order was reversed. The law applies to enumerated institutional persons including those "afflicted with habitual sexual criminal tendencies." A prison inmate had been detected while indulging or attempting to indulge in sodomy and had been ordered sterilized.

Law held valid as not involving infliction of cruel and unusual punishment and as being not class legislation.—In holding the law a valid enactment, the court said, "The act is in no sense a penal statute. The operation provided for is not a punishment for a crime. Its purposes are eugenic and therapeutic." With reference to the "class legislation" objection the court said: "We are of the opinion that the rule announced by that court [the United States Supreme Court] in the case of *Buck* v. *Bell*, *supra*, is a complete answer to the claim here made by the appellant that the law under which this

proceeding is had offends against the fourteenth amendment of the Constitution of the United States."

Order reversed for lack of record justification.—The court then asked "Does this evidence [contained in the record] justify a finding that 'by the law of heredity Esau Walton is the probable potential parent of socially inadequate offspring likewise afflicted' and that his welfare will be promoted by his asexualization?" It reviewed the record which the court said consisted of some sociological and criminological data concerning the appellant, including his reputation at the prison, the evidence of the alleged sexual act which evidence the court showed was conflicting, and (upon appeal to the lower court) of a physician's testimony relative to the various sterilization operations and the effects thereof generally and as regards the appellant. With reference to heredity as utilized in the statute, the court expressed a doubt that "even the most ardent advocate of the immutability of the law of heredity would wish to determine the probable nature of the offspring of Esau Walton without more facts than appear in the record before us"; it also called attention to omission in the record of evidence concerning the manner in which the welfare or health of the appellant would be promoted by his asexualization. It therefore concluded that the record did not justify a finding that, by the law of heredity, the appellant was a potential parent of socially inadequate offspring nor that the appellant would be benefited by sterilization. The court also pointed out that the order failed to specify what kind of operation should be performed, which, it stated, was a right of the appellant. For these reasons, the order of asexualization was reversed.

Therapeutic purpose of law interpreted.—With regard to the statute's provisions that an operation must be for the "best interests" and "welfare" of the person and of society, the court remarked that "If it be advisable to operate upon an inmate of a public institution for therapeutic purposes, it cannot well be contended that the operation should not be performed because such operation also has eugenic effects. Some of the inmates of public institutions upon whom the act under review authorizes the performance of an operation for asexualization are incapable of giving consent. Those capable of consent may refuse consent even though their own welfare requires the treatment provided for in the act. The State, of necessity, is charged with the proper care of inmates confined in public institutions. If the welfare of an inmate of a public institution demands an operation, we know of no constitutional provision, either State or Federal, that prohibits the legislative branch of the government from directing that such operation be performed without the consent or against the will of such inmate."

The Nebraska Decision

On February 11, 1931, a decision was rendered by the Supreme Court of Nebraska in the cases of *In re Clayton* and *Clayton* v. *Board of Examiners of Defectives* declaring valid the State's current statute. It provides for the sterilization of inmates prior to release from State hospitals or penal institutions.

Law held valid as providing due process of law and as not class legislation nor providing for cruel and unusual punishment.—In holding the act to be within the State's police power, the court cited the United States Supreme Court decision on the Virginia law in answer to the contention that the Nebraska act, as regards due process of law and equal protection of the law, was a violation of the Federal Constitution; and it quoted from the Virginia court's decision, wherein that court held the Virginia law nonpenal and concluded that the act does not come within the meaning of the State constitutional inhibition against cruel and unusual punishment. While the law applies to insane persons, habitual criminals, moral degenerates, and sexual perverts as well as to the feeble-minded, the court throughout the opinion mentioned only the feeble-minded and called attention to a "pointed observation" by the trial court that "The only part thereof that could or should be held constitutional would be the part relating to the sterilization of feeble-minded persons, such as the subject of this case * * *."

Interpretation of "operation for the prevention of procreation."—With reference to the provision that the board shall use its judgment as to what "operation would be most appropriate to each individual case," the court observed that the district court had said "* * * and the court interprets the operation of sterilization, as used in this act, to mean the use of that form of sterilization known as vasectomy in the case of a male person and the form of sterilization known as salpingectomy in the case of a female person." The higher court discussed the testimony as to the relative effects of vasectomy and castration and stated that "from the record before us, we conclude that the operation under discussion," is not unconstitutional.

Interpretation as to hereditary and acquired defectiveness.—Relative to the act's provision requiring that before a person could be sterilized there must be certain findings of fact, among which was one that "children born or begotten by such inmate would inherit a tendency" to certain forms of defectiveness or social inadequacy, the court said that since a person may have become so afflicted by reason of an accident, it was the duty of the examining board to inquire into each case to determine whether the individual has an acquired or a congenital or hereditary form of defectiveness. The court found that the appellant presented "an established case of hereditary feeble-mindedness,"

and that "his condition would be transmitted in the germ plasm of his body to his offspring."

The Idaho Decision

A decision by the Supreme Court of Idaho was next rendered on May 20, 1931, being reported as *State* v. *Troutman*, in which the current Idaho statute was upheld. It applies to the general population as well as to institutional inmates.

Law held valid as providing due process of law and equal protection of law and as not authorizing cruel and unusual punishment.—In holding sterilization as provided in this law unobjectionable, the court stated its accord with the Federal decision on the Virginia law; it also stated that the record and the recognized authorities on the scientific questions involved left no doubt that heredity plays a controlling part in the blight of feeble-mindedness and that if there be any natural right for natively mental defectives to beget children, that right must give way to the State's police power in protecting the common welfare. Answer was made to the objection that due process of law is not afforded by showing that the proceeding is pursuant to summons and every safeguard known to a hearing in court with right of appeal is afforded; and to the contention that the act is class legislation, the court pointed to the fact that the Virginia law had been held valid by its supreme court and by the United States Supreme Court, even though it applied only to institutional inmates. As regards the claim that the law violates the State constitutional provision prohibiting cruel and unusual punishment, it was stated that a sterilization operation is not, under the Idaho statute, performed as a punishment and that the proceeding is "in no sense a criminal prosecution." The court reviewed the record and said that "the evidence is clear and convincing that the appellant is mentally deficient to the degree of imbecility and that this condition is native, incurable, and a controlling hereditary trait."

Law not defective as unconstitutional delegation of judicial powers to administrative board.—In answer to the claim that the statute, in authorizing a board to decide sterilization cases, was invalid as violating the State constitutional provision which prohibited the delegation of judicial powers to the executive department, the court viewed the findings of the board as only recommendatory and showed that if consent to the operation be not given, then the board "must proceed in court where a purely judicial proceeding is had, with complete final determination of all rights in the courts. This is held not an infringement upon the province of the judicial department."

The North Carolina Decision

On February 8, 1933, the Supreme Court of North Carolina, in the case of *Brewer* v. *Valk* held defective the sterilization law enacted in that State in 1929. This statute, which was replaced by the current statute, contained no requirement for a hearing upon notice to the individual.

Law containing no requirement of notice and hearing held defective.—The court said that the sole question was "Under the due process clause, can this sterilization be done *without notice or a hearing*?" Stating that in property rights due process requires a forum with notice and a hearing, and that the same must apply to human rights, the court cited the Federal high court decision and quoted that portion which said the Virginia law protected the affected persons by granting to the individual notice and a hearing before a tribunal. It showed that the North Carolina law "makes no provision for notice and hearing, and therefore impinges the due process clause of the Constitution," and said, "we cannot do otherwise than declare the act unconstitutional."

The Oklahoma Decision

The current Oklahoma law was next held valid by the State Supreme Court, on February 14, 1933, in the case of *In re Main*. This law provides for the sterilization of institutional persons upon the adjudication of an administrative board.

Law held valid as providing due process of law and as not authorizing cruel or unusual punishment.—The court denied that the statute was defective as a deprivation of rights without due process of law in violation of the State constitution. The court pointed out that the act was substantially the same as the Virginia act and, after quoting from the United States Supreme Court decision, said, "The procedure provided by the act liberally afforded the patient consideration and protection of his rights, and in the case at bar there has been scrupulous compliance with the provisions of the act * * *." The court, viewing sterilization as analogous to compulsory vaccination, also stated that the State constitutional inhibition against cruel or unusual punishment has "no application to surgical treatment of feeble-minded persons."

Interpretation of provision that operation may be performed only when "without detriment to general health."—The appellant contended that the lower court erred in its finding that sterilization could be effected without detriment to his general health, stating as his reason that the doctors who testified in this regard had not performed such an operation. The court denied that there had been a failure to comply with the statutory provisions in this respect. It took the view

that this objection went to the weight rather than the admissibility of the evidence, adding that "learned and scientific men can virtually know things without having experienced them."

Law not defective as unconstitutional delegation of judicial powers.—Further objection to the act was made in that it delegated judicial powers to a board in violation of a State constitutional provision. In answer to this contention the court called attention to the fact that on appeal "a review and trial de novo is afforded before judicial tribunals." It also pointed out that another provision of the constitution specifically provided that the judicial power of the State could be vested in commissions or boards.

The Alabama Opinion of the Justices

In response to an inquiry of the Governor dated June 10, 1935, the justices of the Supreme Court of Alabama rendered, on June 18, 1935, an advisory opinion as to whether a bill (House bill No. 97) which had been passed during the 1935 session of the legislature was a valid exercise of the State police power. The justices advised the Governor that the bill denied due process of law and it failed to become law. The bill provided for the sterilization of enumerated classes of persons in institutions and in the population at large. In the case of inmates of any hospital for the insane or any institution for mental deficients or feeble-minded, the respective institutional superintendent was designated to decide on the matter of sterilization; certain sexual offenders and recidivists in any State prison were made subject to sterilization upon the order of a commission consisting of the chief medical officer of the convict department, the State health officer, and the superintendent of State insane hospitals, which decision could be carried into effect only with the Governor's approval; and in the case of delinquents or dependents in any reform school, industrial school, training school, or reformatory, and mental deficients in the population at large, the public health committee of the county medical society decided, with the approval of the superintendent of the State insane hospitals, on the necessity of sterilization. In the latter two classes of persons—delinquents and dependents in schools and mental deficients in the population at large—the bill provided that, upon receipt of notification of a decision to sterilize, a person be allowed 30 days in which to file notice of an appeal to a board consisting of the superintendent and two members of his staff to be selected by him. The law further provided that the decision of this board was to be final.

Hearing on notice and right of court appeal held necessary to due process of law.—The justices, in advising that the bill was in conflict with the Federal and State constitutions, stated they did not doubt the authority of the State to provide for the sterilization of the persons and

that, when the proper method was prescribed, such sterilization would not amount to unconstitutional cruel and unusual punishment. They pointed out, however, that the sterilization of a person cannot be effected without a hearing on notice before a duly constituted tribunal or board; and, that if this be not a court, then with the right of appeal to a court for a judicial review of the findings of the board or commission. The justices concluded that the bill in question denied this right.

The California Decision

On December 18, 1939, the District Court of Appeal, Second District, Division 1, in the case of *Garcia* v. *State Department of Institutions et al.*, ruled upon a petition for a writ of prohibition, which writ sought to prevent the State Department of Institutions from proceeding under chapter 369 of the 1937 laws, which is current law, and which authorizes the sterilization of persons, prior to discharge from State hospitals, in the discretion of the Department.

Writ of prohibition denied.—The court denied the petition for a writ of prohibition on the ground that the petition did not "state facts sufficient to justify this court in issuing its writ as prayed." The case fails to show what facts were presented in the petition as the basis for seeking to prevent the sterilization proceeding, nor the reasons for the court's denial of the petition. A dissenting opinion, however, questions the validity of the statute on the ground of lack of provision requiring notice and opportunity for hearing and the legislature's effort to "authorize a purely administrative board to deprive a person of the right of procreation without the opportunity of having the finality of such action passed upon by a court of law."

APPENDIX

Current laws and code citations

State	Current laws		Amendments		Citations to code or supplement	
	Date	Chapter, etc.	Date	Chapter, etc.	Date	Section, etc.
Alabama	1919	704	1923	568:13	1928	1476.
Arizona	1929	44			1936	2945c—2945i.
California	1913	363:2, [1] 3			[2] 1937	539.
Do	1937	[6] 369, 699			[3] 1937	6624, 7002.
Connecticut	1909	209	1919	69	1930	2683—2684.
			1939	148		
Delaware	1923	62	1929	245, 246	1935	3098—3100.
Georgia	1937	414				
Idaho	1925	[4] 194	1929	68, 285	1932	64–601—64–612.
Indiana	1927	241	1937	244	1939	22–1601—22–1606.
Do	1931	50	1937	132	1939	22–1607—22–1612.
Do	1935	312			1939	22–1613—22–1618.
Iowa	1929	66	1931	48	1935	2437–c1—2437–c22.
Kansas	1917	[4] 299			1935	76–149—76–155.
Maine	[1] 1925	208	1929	6	1930	155:57.
			1933	77		
Do	1933	1	1933	77		
Michigan	1929	281			1937	14.381—14.392.
Minnesota [1]	1925	154			1927	4422–1—4422–4.
Mississippi	1928	294			1930	4602—4609.
Montana	1923	164			1935	1444.1—1444.8.
Nebraska	1929	[4] 163			1929	83–1501—83–1509.
New Hampshire	1929	138				
North Carolina	1933	224	1935	463	1935	2304 (m)—2304 (ff1).
			1937	243	1937	2304 (p).
North Dakota	1927	263	1931	80		
Oklahoma	1931	264	1933	46	1937	35–141—35–146.
Do	1935	26			1937	57–171—57–195.
Oregon	1923	194	1925	198		
			1929	348	1930	68–1401—68–1412.
			1935	39		
			1937	125		
South Carolina	1937	125				
South Dakota	1935	113			1939	30.0501—30.0514.
			1939	119		
Utah	1925	[4] 82	1929	59, 75	1933	89–0–1—89–0–11.
Vermont [1]	1931	174			1933	5438—5442.
Virginia	1924	[4] [5] 394			1930	1095h—1095m.
Washington	1921	53			1932	6957—6968.
West Virginia	1929	4			1937	1394—1400.
Wisconsin	1913	693			1937	46.12.

[1] Voluntary laws.
[2] Code entitled "General Laws."
[3] Welfare and Institutions Code.
[4] Held valid by highest State court.
[5] Held valid by Supreme Court of the United States.
[6] Petition for writ of prohibition denied by a district court of appeal.

Court decisions on eugenic sterilization [1]

Title of case	Citation		Decision		Law involved		Holding	Law now current
	Official reports	Other reports	Date	Court [2]	State of enactment	Date		
Smith *v.* Board of Examiners	85 N. J. L. 46	88 A. 963	Nov. 18, 1913	State	New Jersey	1911	Invalid	No.
Davis *v.* Berry		216 F. 413	June 24, 1914	Federal	Iowa	1913	do	No.
Berry *v.* Davis	242 U. S. 468	37 S. Ct. 208, 61 L. Ed. 441	Jan. 15, 1917	U. S. Supreme Court.	do	1913	Question moot [3]	No.
In re Thomson (Osborn *v.* Thomson).	103 Misc. Rep. 23	169 N. Y. Supp. 638	Mar. 5, 1918	State	New York	1912	Invalid	No.
Haynes *v.* Lapeer	201 Mich. 138	166 N. W. 938	Mar. 28, 1918	do	Michigan	1913	do	No.
Osborn *v.* Thomson	185 App. Div. 902	171 N. Y. Supp. 1094	July 1, 1918	do	New York	1912	do	No.
Williams *v.* Smith	190 Ind. 526	131 N. E. 2	May 11, 1921	do	Indiana	1907	do	No.
Smith *v.* Wayne	231 Mich. 409	204 N. W. 140	June 18, 1925	do	Michigan	1923	Valid	No.
Buck *v.* Bell	143 Va. 310	130 S. E. 516	Nov. 12, 1925	do	Virginia	1924	do	Yes.
In re Salloum	236 Mich. 478	210 N. W. 498	Oct. 22, 1926	do	Michigan	1923	do	No.
Buck *v.* Bell	274 U. S. 200	47 S. Ct. 584; 71 L. Ed. 1000	May 2, 1927	U. S. Supreme Court.	Virginia	1924	do	Yes.
State *v.* Schaffer	126 Kans. 607	270 P. 604	Oct. 6, 1928	State	Kansas	1917	do	Yes.
Davis *v.* Walton	74 Utah 80	276 P. 921	Apr. 9, 1929	do	Utah	1925	do	Yes.
In re Clayton (Clayton *v.* Board of Examiners).	120 Nebr. 680	234 N. W. 630	Feb. 11, 1931	do	Nebraska	1929	do	Yes.
State *v.* Troutman	50 Idaho 673	299 P. 668	May 20, 1931	do	Idaho	1925	do	Yes.
Brewer *v.* Valk	204 N. C. 186	167 S. E. 638	Feb. 8, 1933	do	North Carolina	1929	Invalid	No.
In re Main	162 Okla. 65	19 P. (2d) 153	Feb. 14, 1933	do	Oklahoma	1931	Valid	Yes.
Opinion of Justices [4]	230 Ala. 543	162 So. 123	June 18, 1935	do	Alabama	[4] 1935	Invalid	No.[4]
Garcia *v.* State Dept. of Inst.	36 Cal. App. (2d) 152	97 P. (2d) 264	Dec. 18, 1939	do	California	1937	Valid	Yes.

[1] This table includes reported cases up to and including the General Digest, vol. 8 (July 1939). It excludes decisions on punitive sterilization.

[2] All State court decisions are by the highest court except the New York decisions, which were by the Supreme Court of Albany County and, on appeal, by the Appellate Division of the Supreme Court, Third Department. The New York law was repealed while an appeal was pending in the State's highest court.

[3] Decision had become superfluous and case moot because of subsequent legislation passed while case was pending.

[4] Advisory opinion to Governor on the basis of which bill failed to become law.

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